

Verizon of New York Inc. did not timely submit its discontinuance request, and is therefore excluded from seeking a wireline discontinuance on Fire Island and New Jersey

In the past, courts have mandated that the FCC dismiss such late-filed petitions for being untimely, absent a showing that there were “extremely unusual circumstances.”

For example, in *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) the Court stated “we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances.” citing *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); See also, *Networkip, LLC v. F.C.C.*, 548 F.3d 116, 127 (D.C. Cir. 2008) “As we explained in *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990), before the FCC can invoke its good cause exception, it both must explain why deviation better serves the public interest, and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation,’ *id.* at 1166. The reason for this two-part test flows from the principle ‘that an agency must adhere to its own rules and regulations, ‘and ‘[a]d hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned, for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action.’ *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-51 (D.C. Cir. 1986)”;

In *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) for example, the court found no abuse of discretion when the Commission declined to entertain a late-filed petition in the absence of extenuating circumstances prohibiting a timely filing..

In its July 24, 2013 [Public Input Sought on Verizon Services Affected by Hurricane Sandy](#), the FCC stated that:

Verizon ...seeks a waiver of the timing provisions of sections 63.60(b), 63.63(a) and 63.71 of the Commission's rules to the extent necessary. Although section 63.60(b) is not a timing provision, for purposes of part 63, section 63.60(c) defines a reasonable time for the restoration of service or the establishment of comparable service after a discontinuance, reduction, or impairment of service occasioned by conditions beyond the control of a service provider as no more than 60 days in most cases. Section 63.63(a) states that informal requests for emergency discontinuance authority in most cases shall be made by filing not later than 65 days after the occurrence of the conditions which occasioned the discontinuance, reduction or impairment.

In WC# 13-150, Verizon of New York, Inc. asserts that copper wireline facilities used to provide these services in certain parts of New Jersey and New York were destroyed or rendered inoperable by Hurricane Sandy on or after October 29, 2012. Section 63.60(c) defines a reasonable time for the restoration of service or the establishment of comparable service after a discontinuance, reduction, or impairment of service occasioned by conditions beyond the control of a service provider as no more than 60 days in most cases. And Section 63.63(a) states that informal requests for emergency discontinuance authority in most cases shall be made by filing not later than 65 days after the occurrence of the conditions which occasioned the discontinuance, reduction or impairment.

Since the event, Superstorm Sandy, occurred on October 29, 2012, significantly more than 65 days after that event passed before Verizon submitted to the FCC its Discontinuance Application, which was on June 7, 2013.

Given that fact that Verizon of New York, Inc. did not timely submit its discontinuance request, isn't Verizon of New York, Inc. excluded from seeking this discontinuance on Fire Island and New Jersey, or from any FCC consideration on this matter? And accordingly, isn't Verizon of New York, Inc. then obligated to return its Wireline Services to the affected areas, since it cannot justify its copper retirement

request under established FCC rules, with an untested and highly unpopular wireless technology, VoiceLink?

In its June 7, 2013 filing with the FCC (<http://apps.fcc.gov/ecfs/document/view?id=7022424983>), entitled Section 63.71 Application of Verizon New York Inc. and Verizon New Jersey Inc., Verizon of New York made no showing to explain its untimely filing.

As stated in [*Reuters Ltd. v. Federal Communications Comm'n*, 781 F.2d 946, 950-51 \(D.C.Cir.1986\)](#)(noting that an agency "is not at liberty to depart from its own [clear] rules" and that no deference is accorded such an agency decision to depart)::

(I)t is elementary that an agency must adhere to its own rules and regulations. *Ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned, [*Teleprompter Cable Systems v. FCC*, 543 F.2d 1379, 1387 \(D.C.Cir.1976\)](#), for therein lie the seeds of destruction of the orderliness and predictability which are the hallmarks of lawful administrative action. Simply stated, rules are rules, and fidelity to the rules which have been properly promulgated, consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life.

On that basis, alone, the Section 214(a) Petition of Verizon of New York, Inc. to discontinue wireline service on Fire Island and sections of New Jersey should not be considered and must be dismissed.